



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 743, and 748

[Docket No. 220524-0120]

RIN 0694-AI89

Adoption of Congressional Notification Requirement for Certain Semiautomatic Firearms Exports under the Export Administration Regulations (EAR)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to add a new section to the EAR to adopt a congressional notification requirement for certain license applications of semiautomatic firearms meeting certain value and destination requirements. This rule does not change the interagency license process for these firearms or how license applicants currently structure or generally apply for BIS licenses.

DATES: This rule is effective [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Steven Clagett, Office of Nonproliferation Controls and Treaty Compliance, Nuclear and Missile Technology Controls Division, tel.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

In this final rule, the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to add new § 743.6, Prior notifications to Congress of exports of semiautomatic firearms, to adopt a congressional notification requirement for certain license applications having semiautomatic firearms that are (i) classified under Export Control Classification Number (ECCN) 0A501.a and (ii) valued at \$4 million or more. The congressional notification requirement will not apply if the total value of the application is valued at \$4 million or more but contains 0A501.a semiautomatic firearms valued at less than \$4 million. Further, the congressional notification requirement will not apply to license applications if the 0A501.a semiautomatic firearms are destined for countries in Country Group A:5 or A:6 (see supplement no.1 to part 740 of the EAR), with the exception of Mexico, South Africa, and Turkey. The congressional notification requirement will also not apply to exports to personnel and agencies of the U.S. Government under License Exception GOV (§ 740.11(b) of the EAR) or when for the official use by an agency of the North Atlantic Treaty Organization (NATO).

This congressional notification requirement is warranted because of the unique nature of 0A501.a semiautomatic firearms and their prior jurisdiction under the International Traffic in Arms Regulations (ITAR). While the Commerce Control List (CCL) has long controlled certain firearms, the firearms subject to this congressional notification requirement are often used by military and law enforcement personnel, as well as for recreational purposes. Those items were transferred to BIS's jurisdiction in a final rule published on January 23, 2020 (85 FR 4136) identifying firearms, guns, ammunition and related articles that no longer warranted control on

the U.S. Munitions List and were transferred to the CCL. Prior to the March 9, 2020 effective date for that rule, 0A501.a semiautomatic firearms required congressional notification pursuant to § 123.15(a)(3) of the ITAR for licenses in the amount of \$1 million or more. Through publication of this rule, BIS is adopting congressional notifications based on the criteria in the new § 743.6 of the EAR for certain export licenses of these items.

While the ITAR's congressional notification requirement is informative for developing new § 743.6 of the EAR, BIS is utilizing a different scope for this congressional notification requirement. Under the EAR, exporters can make a good faith estimate of the quantity and value of exports needed over the standard four-year validity period of a BIS license. This can include a license covering multiple purchase orders or anticipated purchase orders. Under the ITAR, DSP-5 licenses are generally tied to a single purchase order. To account for these differences, BIS is using \$4 million as the value for the congressional notification requirement under § 743.6, which is an equivalent annual average of \$1 million in potential exports per year during the validity period of the license. Essentially, the value threshold in § 743.6 will be four times the value of the ITAR's value threshold in § 123.15(a)(3) reflecting the difference in licensing requirements. Additionally, because these semiautomatic firearms are less sensitive than the fully-automatic firearms that continue to be controlled under USML Category I of the ITAR, the congressional notification requirement will not apply to a group of allied countries.

This rule does not change the interagency license review process for these firearms or how license applicants currently structure or generally apply for BIS licenses. License applicants may continue to apply for prospective sales, so long as they do not break-up contract values in order to come under the \$4 million dollar threshold specified in § 743.6 and are able to identify the items to be exported, country where the items will be exported, parties to the transaction and end use of the items. This rule does not change how applicants apply for licenses, except for requiring new support documents for licenses that meet the criteria in § 743.6 and as described further below under new paragraph (bb) in supplement no. 2 to part 748.

The congressional notification will be submitted for those license applications for which the interagency review process has resulted in a recommendation to approve, which is consistent with how BIS has managed the process for “600 series Major Defense Equipment” congressional notification process. The new congressional notification requirement will complement the existing export control requirements for 0A501.a semiautomatic firearms, which are subject to a worldwide license requirement by BIS, import certificate requirements used by foreign countries to ensure that firearms to be exported are authorized by the respective foreign government of the recipient, interagency review process with the Departments of Defense and State, and as well as BIS’s extensive enforcement and compliance efforts to ensure that exports are made in accordance with U.S. national security and foreign policy interests.

B. Revisions to EAR

This rule makes the following changes to the EAR for the adoption of congressional notification requirement for certain semiautomatic firearms exports.

This rule adds § 743.6 Prior notifications to Congress of exports of certain firearms. This new section is modeled on the same type of congressional notification process as followed under § 743.5 for “600 Major Defense Equipment.” New § 743.6 consists of four paragraphs.

Paragraph (a) (General Requirement) specifies that any license application for the export of semiautomatic firearms controlled under ECCN 0A501.a (which includes semiautomatic rifles and semiautomatic pistols) will be notified to Congress as provided in § 743.6. Paragraph (a) includes two exclusions under paragraphs (a)(1) to (2) from the congressional notification requirement. Paragraph (a)(1) excludes exports to personnel and agencies of the U.S. Government under License Exception GOV (§ 740.11(b) of the EAR). Paragraph (a)(2) excludes applications for official use by an agency of NATO.

New paragraph (b) specifies the country scope for these congressional notifications. Paragraph (b) specifies that BIS will notify Congress prior to issuing a license authorizing the

export of items to a country outside the countries listed in Country Group A:5 or A:6, with the exception of Mexico, South Africa, or Turkey. Paragraph (b) specifies that the congressional requirement will apply when the commodities are sold under a contract or are otherwise part of an export transaction that includes \$4 million or more of semiautomatic firearms controlled by ECCN 0A501.a. For these reasons, BIS does not anticipate any change in the number of license applications received by BIS because license applicants are required to follow the same process they were previously in determining how to structure a license application for these semiautomatic firearms controlled under ECCN 0A501.a.

Paragraph (c) provides guidance on additional information that license applicants will need to provide as part of the license application process. Importantly, this rule does not require a purchase order to apply for a license. However, if the license application includes 0A501.a semiautomatic firearms subject to a signed contract (which may be a purchase order), paragraph (c) specifies the signed contract would need to be included as a support document for the license application. Paragraph (c) further specifies that a written explanation from the applicant will be required when the export does not include a contract and whether the application is supported by a signed contract or a written explanation by the applicant, an applicant will need to include a statement of the value of the semiautomatic firearms controlled by ECCN 0A501.a to be exported for any proposed export described in paragraph (b) of § 743.6.

This final rule also adds two anti-circumvention sentences to the end of paragraph (c) to make license applicants aware that they are prohibited from splitting license applications in order to try to circumvent the congressional notification process. This rule specifies that any activity intended to circumvent notification requirements is prohibited. The last sentence this rule adds to paragraph (c) provides illustrative examples of such prohibited activities, such as the splitting or structuring of contracts to avoid exceeding applicable notification dollar value limits.

The dollar value threshold of \$4 million or more will only be based on the portion of the license application for semiautomatic firearms controlled by ECCN 0A501.a. Paragraph (c)

specifies that license applications for semiautomatic firearms controlled by ECCN 0A501.a may include other nonautomatic firearms, shotguns, other 0x5zz items, or other items subject to the EAR. As noted above, BIS does not intend for license applicants to change their behavior for how they are currently structuring licenses, so this rule adds text to paragraph (c) to make it clear to license applicants that they may and are encouraged to continue with their current license application practices of including other firearms related items on license applications. However, to make this process more manageable for BIS, this rule specifies under paragraph (c) that the applicant must clearly identify the semiautomatic firearms controlled by ECCN 0A501.a. This requirement will assist BIS in identifying whether the license application requires congressional notification under § 743.6 and identifying the information that will need to be reported to Congress. As a conforming change to paragraph (c), this final rule also adds a new paragraph (bb) to supplement no. 2 to part 748 - Unique Application and Submission Requirements of the EAR, so license applicants are aware of the additional support document requirements specified under § 743.6(c).

Finally, this final rule adds paragraph (d) (Additional information), to provide an email that license applicants may use to ask questions regarding new § 743.6. As noted above, this final rule adds a new paragraph (bb) (Semiautomatic firearms controlled under ECCN 0A501.a) to supplement no. 2 to part 746 to assist public understanding of the requirement in § 743.6(c). New paragraph (bb) specifies that for export license applications that require prior notifications to Congress of exports of semiautomatic firearms controlled under ECCN 0A501.a under the criteria of § 743.6, the license applicant must include the information specified in § 743.6(c) of the EAR. This rule includes a parenthetical phrase in new paragraph (bb) to cross reference applicants back to §743.6(c).

This rule also adds a new general restriction on the use of EAR license exceptions under § 740.2 Restrictions on all license exceptions by adding paragraph (a)(23). New paragraph (a)(23) specifies exports of semiautomatic firearms controlled by ECCN 0A501.a sold under a

contract that includes \$4 million or more of such items are not eligible for any license exception other than exports to personnel and agencies of the U.S. Government under License Exception GOV (§ 740.11(b) of the EAR), for official use by an agency of NATO, or destined to a country listed in Country Groups A:5 or A:6 (see supplement no. 1 to part 740 of the EAR) except Mexico, South Africa, or Turkey. BIS added this restriction consistent with a similar license exception restriction that exists in § 740.2(a)(15) and (16) for “600 Series Major Defense Equipment” that requires congressional notification. New paragraph (a)(23) will ensure all exports that require a congressional notification under § 743.6 will require the submission of a BIS license with limited exceptions.

BIS notes that the vast majority of firearms exported require a BIS license to be obtained. The EAR license exceptions that are available for semiautomatic firearms (as well as other firearms under 0A501.a and .b) are limited and the terms of those license exceptions, such as License Exception BAG (limited to three individually owned firearms), License Exception TMP (exporting a firearm to a trade show or sending to servicing or repair under paragraphs (a)(5) or (a)(6) is limited to 75 firearms), or License Exception RPL, impose additional conditions on the use of license exceptions. In addition, the likelihood of a semiautomatic firearm controlled under 0A501.a being exported in the limited quantity required under the license exceptions described above and meeting or exceeding the \$4 million threshold would be extremely unlikely, unless each firearm was valued at a very high rate or there was some type of unusual circumstance, such as where a U.S. firearms manufacture had a defective product line that was exported to a distributor and all the firearms needed to be returned for warranty work for subsequent export. The only EAR license exception where a high dollar value export is likely would be under License Exception GOV for the United States Government under paragraphs (b)(2)(ii), but that is already excluded from the congressional notification requirement because of the U.S, government end user.

C. Clarification to existing requirement for “600 series Major Defense Equipment”

This rule also adds a new paragraph (aa) (“600 Series Major Defense Equipment”) to supplement no. 2 to part 748 to assist public understanding of the requirement in § 743.5(d). The longstanding requirement in § 743.5(d) was added to the EAR on April 16, 2013 (78 FR 22722), but BIS determined it would still be beneficial to license applicants to include a new paragraph (aa) in supplement no. 2 to part 748 to make it easier to find this requirement, similar to what is described above for new paragraph (bb). New paragraph (aa) specifies that for export license applications that require prior notifications to congress of exports of “600 series major defense equipment” under the criteria of § 743.5, the license applicant must include the information specified in §743.5(d) of the EAR. This rule includes a parenthetical phrase to cross reference applicants back to §743.5(d).

Lastly, as a clarification on the correct email address to use for “600 Series Major Defense Equipment,” this rule removes the email address of bis.compliance@bis.doc.gov in § 743.5(d) and adds a new email address of mcd_compliance@bis.doc.gov in its place.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER], pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

Only license applications received on or after [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER] may be subject to congressional notification under § 743.6 of the EAR.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. Sections 4801–4852). ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This final rule has been designated a “significant regulatory action”, under Executive Order 12866.
2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694-0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.6 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. Total burden hours associated with the PRA and OMB control number 0694-0088 are expected to increase as a result of this rule because of the new support document requirement for license applications that require congressional notification pursuant to the § 743.6 that this rule adds to supplement no. 2 to part 748 under paragraph (bb) (*Semiautomatic firearms controlled under ECCN 0A501.a*). BIS estimates that sixty of the current license applications that are submitted to BIS annually will require the support documents specified in paragraph (bb). Specifically, for export license applications that require prior notifications to congress of exports of semiautomatic firearms controlled under ECCN 0A501.a under the criteria of § 743.6, the exporter must include a copy of the signed contract or, if there is no

contract, a written explanation from the applicant (including a statement of the value of the firearms controlled by ECCN 0A501.a to be exported) for any proposed export described in § 743.6(b) of the EAR. License applications for semiautomatic firearms controlled by ECCN 0A501.a may include other nonautomatic firearms, shotguns, other 0x5zz items, or other items subject to the EAR, but the applicant must clearly identify the semiautomatic firearms controlled by ECCN 0A501.a. This support document requirement will make this process more manageable for BIS by having the applicant clearly identify the semiautomatic firearms controlled on a license application. BIS estimates the burden hours associated with this collection will increase by 20 hours (*i.e.*, 60 existing license applications that will now require these additional support documents × 20 minutes per response) for a total estimated cost increase of \$1,800 (*i.e.*, 60 hours × \$30 per hour). The \$30 per hour cost estimate for OMB control number 0694–0088 is consistent with the salary data for export compliance specialists currently available through glassdoor.com (glassdoor.com estimates that an export compliance specialist makes \$55,280 annually, which computes to roughly \$26.58 per hour).

Lastly, this rule also adds a new paragraph (aa) (“*600 Series Major Defense Equipment*”) to supplement no. 2 to part 748 to assist public understanding of the requirement in § 743.5(d). The requirement in § 743.5(d) was added to the EAR on April 16, 2013 (78 FR 22722), but BIS determined it would still be beneficial to license applicants to also include a new paragraph (aa) in supplement no. 2 to part 748 to make it easier to find this requirement. BIS does not anticipate this change will result in a change in the burden hours under this collection because BIS would estimate no more than one existing license application per year would require this support document.

BIS is in the process of updating this information collection to account for the increase in burden hours and costs posed by this rule. Any comments regarding this collection of information, including suggestions for reducing the burden, may be submitted online at

<https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by using the search function and entering the title of the collection or the OMB Control Number.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of ECRA, this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)).

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 740, 743, and 748 of the Export Administration Regulations (15 CFR parts 730-774) are amended as follows:

PART 740 – LICENSE EXCEPTIONS

1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

2. Section 740.2 is amended by adding paragraph (a)(23) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(23) Exports of semiautomatic firearms controlled by ECCN 0A501.a sold under a contract or otherwise part of an export that includes \$4,000,000 or more of such items are not eligible for any license exceptions except to personnel and agencies of the U.S. Government under License Exception GOV (§ 740.11(b) of the EAR), for official use by an agency of NATO, or where a license exception would otherwise be available for the export of such items to a country listed in Country Groups A:5 or A:6 (see supplement no. 1 to part 740 of the EAR) except Mexico, South Africa, or Turkey.

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PART 743 – SPECIAL REPORTING AND NOTIFICATION

3. The authority citation for 15 CFR part 743 is revised to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; 78 FR 16129.

4. Section 743.5(e) is amended by removing “bis.compliance@bis.doc.gov” and adding in its place “mcd_compliance@bis.doc.gov”.

5. Section 743.6 is added to read as follows:

§ 743.6 Prior notifications to Congress of exports of certain semiautomatic firearms.

(a) *General requirement.* Applications to export semiautomatic firearms controlled by ECCN 0A501.a will be notified to Congress as provided in this section before licenses for such items are issued, except as specified in paragraphs (a)(1) to (2) of this section.

(1) Exports of semiautomatic firearms controlled by ECCN 0A501.a to personnel and agencies of the U.S. Government under License Exception GOV (§ 740.11(b) of the EAR) do not require such notification.

(2) Exports of semiautomatic firearms controlled by ECCN 0A501.a for official use by an agency of NATO do not require such notification.

(b) *Notification criteria.* Unless excluded in paragraphs (a)(1) to (2) of this section, BIS will notify Congress prior to issuing a license authorizing the export of items to Mexico, South Africa, or Turkey or any other country not listed in Country Group A:5 or A:6 (see supplement no.1 to part 740 of the EAR) if the items are sold under a contract or are otherwise part of an export transaction that includes \$4,000,000 or more of semiautomatic firearms controlled by ECCN 0A501.a.

(c) *License application information.* In addition to information required on the application, the exporter must include a copy of the signed contract or, if there is no contract, a written explanation from the applicant (including a statement of the value of the firearms controlled by

ECCN 0A501.a to be exported) for any proposed export described in paragraph (b) of this section. License applications for semiautomatic firearms controlled by ECCN 0A501.a may include other nonautomatic firearms, shotguns, other 0x5zz items, or other items subject to the EAR, but the applicant must clearly identify the semiautomatic firearms controlled by ECCN 0A501.a. The applicant clearly distinguishing the semiautomatic firearms controlled by ECCN 0A501.a from any other items on the license application will assist BIS in assessing whether the license application requires congressional notification under this section and identifying the information that will need to be reported to Congress. Any activity intended to circumvent notification requirements is prohibited. Such devices include, but are not limited to, the splitting or structuring of contracts to avoid exceeding applicable notification dollar value limits described in paragraph (a) of this section.

(d) *Additional information.* For questions on this section, you may contact the Nuclear and Missile Technology Controls Division, Guns and Ammunition licensing group at firearmsCN@bis.doc.gov.

PART 748 – APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION

6. The authority citation for 15 CFR part 748 is revised to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2021, 86 FR 43901 (August 10, 2021).

7. Supplement No. 2 to part 748 (Unique Application and Submission Requirements) is amended by adding paragraphs (aa) and (bb) to read as follows:

SUPPLEMENT NO. 2 TO PART 748 - UNIQUE APPLICATION AND SUBMISSION REQUIREMENTS

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(aa) “*600 Series Major Defense Equipment.*” For license applications that require prior notifications to Congress of exports of “600 series major defense equipment” pursuant to § 743.5, the exporter must include a copy of the signed contract (including a statement of the value of the “600 Series Major Defense Equipment” to be exported under the contract). (*See* §743.5(d) of the EAR)

(bb) *Semiautomatic firearms controlled under ECCN 0A501.a.* For export license applications that require prior notifications to congress of exports of semiautomatic firearms controlled under ECCN 0A501.a under the criteria of § 743.6, the exporter must include a copy of the signed contract or, if there is no contract, a written explanation from the applicant (including a statement of the value of the firearms controlled by ECCN 0A501.a to be exported). License applications for semiautomatic firearms controlled by ECCN 0A501.a may include other nonautomatic firearms, shotguns, other 0x5zz items, or other items subject to the EAR, but the applicant must clearly identify the semiautomatic firearms controlled by ECCN 0A501.a.

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.